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FISCAL IMPACT REPORT

SPONSOR Hall **ORIGINAL DATE** 2/3/16 **LAST UPDATED** 2/5/16 **HB** 311/aHAFC

SHORT TITLE Transfers & Reversions to General Fund **SB** _____

ANALYST Sallee/Armstrong

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
(\$9,000.0)			Nonrecurring	Other State Funds (See Narrative)
(\$10,000.0)			Nonrecurring	Restricted General Fund Operating Reserve
(\$3,255.0)			Nonrecurring	GF Capital Outlay Homeland Security & Emergency Management Dept.
(\$147,500.0)			Nonrecurring	Tax Stabilization Reserve
\$169,755.0			Nonrecurring	General Fund Operating Reserve
	(\$32,508.0)		Nonrecurring	Other State Funds (See Narrative)
	(\$10,000.0)		Nonrecurring	N.M. Finance Authority Public Project Revolving Fund (See Narrative)
	(\$9,500.0)		Nonrecurring	Department of Finance & Administration Encumbrances
	\$52,008.7		Nonrecurring	General Fund Appropriations Account
	(\$18,500.0)		Nonrecurring	Tobacco Settlement Permanent Fund
	\$18,500.0		Nonrecurring	Tobacco Settlement Program Fund

(Parenthesis () Indicate Revenue Decreases)

Companion and relates to the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Department of Finance and Administration

Public Education Department

Responses Received From

Attorney General's Office

Board of Licensure for Professional Engineers and Professional Surveyors

New Mexico Finance Authority

Regulation and Licensing Department

State Auditor's Office

Workers Compensation Administration

SUMMARY

Synopsis of House Appropriations and Finance Committee Amendment

The amendments adopted by the House Appropriations and Finance Committee reflect the suggestions from the Regulation and Licensing Department (RLD) and the New Mexico Finance Authority (NMFA) discussed below under "Suggested Amendments." Table 2 on page 8 has been revised to reflect the amendments to the RLD boards and commissions fund balances to be transferred to the general fund.

The bill's original language intercepted NMFA's FY17 distribution of governmental gross receipts tax (GGRT) revenue, creating unanticipated problems for NMFA. Legislators worked with NMFA to craft the HAFC amendment to draw the funds from NMFA's FY16 flow through rather than FY17 GGRT deductions before transfer to NMFA. With the amended language, the state can receive the funds at the beginning of the year rather than spread over 12 months.

Synopsis of Bill

House Bill 311 restores general fund operating reserve balances and supports spending for FY16 and FY17 through three main provisions: sweeping cash balances from accounts, transferring funds from the tax stabilization reserve to the general fund operating reserve, and diverting additional tobacco permanent fund revenues to the program fund for appropriation to Medicaid.

The bill transfers \$74.2 million from various accounts in the treasury (see Attachment A on page 7) to the general fund operating reserve and appropriations accounts in FY16 and FY17.

The bill transfers \$147.5 million from the tax stabilization reserve to the general fund operating reserve in FY16.

The bill uses 100 percent rather than 50 percent of tobacco settlement revenue for transfer to the tobacco settlement program fund.

The bill contains an emergency clause.

FISCAL IMPLICATIONS

Section 1 – Transfers to the general fund operating reserve in FY16: Cash balances totaling \$19 million from various funds; balances from a general fund capital outlay appropriation to the Homeland Security and Emergency Management Department; and \$147.5 million from the tax stabilization reserve to the general fund operating reserve.

Section 2 – Transfers \$32.5 million from various funds to the general fund appropriations account in FY17; transfers \$9.5 million in accumulated balances from past general fund appropriations encumbered at the Department of Finance and Administration to the appropriations account in FY17; transfers \$10 million in residual balances after the New Mexico Finance Authority has satisfied all bond payment requirements to the appropriations account in FY17; and diverts 50 percent of tobacco settlement revenue (estimated \$18.5 million) to the tobacco settlement program fund. The revenue to the program fund is in addition to the annual distribution from the permanent fund to the program fund.

In FY16, the general fund operating reserve would receive \$169.8 million in increased revenue. With spending levels contained in the proposed HAFC Substitute for HB2, the estimated FY16 ending balance in the general fund operating reserve would be \$130.6 million. This balance would carry into FY17, assuming the amount appropriated by the proposed HAFC Substitute for HB2 are not increased. Total general fund reserves, which also include the tobacco settlement permanent fund, would be about \$400 million in FY16 and FY17, or about 6.4 percent of recurring appropriations.

SIGNIFICANT ISSUES

The January consensus revenue estimate reduced FY16 projections by almost \$145 million and reduced the FY17 estimate by almost \$202 million from the December forecast. For FY16, the reduced revenue combined with nonrecurring appropriations will require a transfer of almost \$315 million from the operating reserve to the general fund appropriations account and result in a negative balance in the operating reserve. Should revenues fall further there would not be any money available in the operating reserve to cover additional transfers to the appropriations account as authorized by the General Appropriations Act of 2015. The same negative balance would be true for FY17 with no funding available for the Legislature to make additional nonrecurring appropriations for the 2017 legislative session, specials, supplemental, or deficiency appropriations. Further, additional funding above the estimated \$30 million increase in recurring revenue for FY17 is needed to meet appropriations contained in the proposed HAFC Substitute for HB2.

General fund reserves consist of the general fund operating reserve, appropriation contingency fund (primarily for disaster allotments), state support reserve fund, tobacco permanent fund and the tax stabilization reserve. The general fund operating reserve is the most liquid of the various accounts and used to transfer funds to the appropriation account for authorized spending in the general appropriations act. The general appropriations act also contains additional transfer authority, typically the equivalent of one percent of general fund appropriations, to maintain a balanced budget in case of revenue shortfalls. Revenue shortfalls of more than amounts in transfer authority would require additional legislative action to balance the budget.

While part of the general fund reserves, the tobacco settlement permanent fund and the tax stabilization reserve require additional legislative action to access. HB311 transfers the balance of the tax stabilization reserve, along with other fund transfers in FY16, to ensure the operating reserve has sufficient funds available in case of additional revenue shortfalls to maintain a balanced budget.

The State Auditor's Office (SAO) analysis included a statement of best practices for managing fund balances. According to the analysis, standard financial operations typically require certain amounts of dollars to be held as fund balances to be used to offset funding gaps between fund expenditure and fund reimbursement, similar to the way a business would utilize "working capital." Funds are also commonly used to store dollars for purposes of future spending, contingency spending, and future debt repayment similar to how a business would use various types of savings and investment accounts. However, just as with a business, agencies have a responsibility to control and minimize fund balances to put those dollars toward their intended purpose.

HB311 transfers cash balances from various funds across state government. Legislative Finance Committee and Department of Finance and Administration staff reviewed these balances to identify funds with balances in excess of what is necessary to support agency operations in the current and future years. In FY16, a total of \$9 million would be transferred from the Legislature's balances, the consumer settlement fund, and the weight distance tax permit fund, as shown in Attachment A. These amounts would be transferred to the operating reserve to maintain solvency. In FY17, \$32.5 million in other state funds would be transferred to the appropriation account. The largest transfer amounts from fund balances in this bill are from:

- The delinquent property tax fund for \$6 million. Projections, which include this transfer out, show the fund's balance to be nearly \$7.3 million at the end of FY17 and continuing to grow to \$8.3 million at the end of FY18. This fund receives approximately \$5 million in annual revenues from penalties and interest and actual FY15 revenues outpaced expenditures by \$1.9 million.
- Reversion of \$3.255 million from a 2008 general fund capital outlay appropriation for flood damage improvements in Lincoln and Otero counties. The reversion date for this appropriation was extended in 2013, but no funds have been expended. Issues such as determining the scope of damages and estimates of the resources needed have hindered progress.
- The local DWI grant fund for \$3.5 million. In FY15, this fund distributed \$19.5 million to local DWI programs, drug courts, and the indigent ignition interlock fund and received \$19.7 million in liquor excise tax revenue. Including the HB311 transfer, LFC staff projections show the fund's FY17 ending balance at \$1.7 million and growing to \$2.6 million at the end of FY18.
- The enhanced 911 fund for \$4 million. The funds recurring telephone surcharge revenues are projected to match recurring expenditures in FY17 and FY18. Considering the HB311 transfer, the fund is projected to end FY18 with a balance of \$2.8 million.

- The workers' compensation administration fund for \$6 million. In FY15, this fund received \$11.3 million from workers' compensation assessments and penalties and expended \$9.7 million for agency operations and ended the fiscal year with a balance of nearly \$10 million. Following the transfer the fund's FY17 ending balance is projected to be \$1.4 million. From FY13-FY15, the fund's average annual revenues outpaced average expenditures by \$1 million.
- A variety of RLD boards and commission funds, totaling \$6.3 million. The specific funds and amounts were initially proposed by RLD and amended by HAFC to address concerns that arose after the bill was drafted. According to RLD, the targeted funds ended FY15 with a balance of \$11.9 million. Setting aside FY16 operating budgets totaling \$3.8 million and reserving \$1.5 million for a one-stop licensing program upgrade, the funds have \$6.5 million in available balances. Assuming the funds receive \$3.5 million in revenue in FY16, the annual average from FY11-FY14, their FY16 ending balance is projected to be \$3.7 million.

HB311 de-earmarks an appropriation to the Public Education Department (PED) from Laws 2013, Chapter 191, to provide supplemental special education maintenance of effort (MOE) funding if other funding mechanisms were not accepted by the federal Department of Education (DOE) for FY11. The state and DOE are currently in dispute over whether New Mexico met the MOE requirement in FY10. No ruling has been finalized for that year, and New Mexico has not been notified it did not meet the requirement for FY11. Resolution of any dispute over FY11, or any other year with a potential dispute, does not appear imminent. The funding transferred by HB311 is currently classified as a restricted amount in the general fund operating reserve. HB311 would remove this restriction, but for only \$10 million of the total 2013 appropriation. Additionally, PED already has \$10 million booked as a contingent liability for the same purpose in case DOE rules against the state.

For FY17, and in addition to fund sweeps, HB311 transfers governmental gross receipt tax revenue that is not needed to satisfy bonds at the New Mexico Finance Authority (NMFA) to the general fund appropriations account. NMFA expressed concerns over the language in HB311 and suggested an amendment to satisfy its bond requirements. The amount of \$10 million will be available after NMFA satisfies its bond requirements and will be from excess cash balances in FY16 and thus available for transfer in FY17. See Suggested Amendments.

HB311 also disencumbers \$9.5 million in cash balances held at DFA from prior year personal services and benefits appropriations and budget adjustments that are in excess of prior year spending requirements related to the AFSCME lawsuit over state employee pay.

Finally, HB311 continues the transfer of additional tobacco settlement revenue to the tobacco settlement program fund. In FY16, and in previous solvency measures during the great recession, the state transferred all of the annual revenue to the program fund rather than half. The additional amount in FY16 is appropriated to the Medicaid program at the Human Services Department, and HB311 continues this for FY17. The additional amount is estimated to be \$18.5 million. The proposed HAFC Substitute for HB2 would then appropriate this amount in FY17 to the Medicaid program from the tobacco settlement program fund.

PERFORMANCE IMPLICATIONS

HB311 addresses solvency issues to ensure the operating reserve and appropriations account in the general fund have sufficient money to cover spending in FY16 and FY17 and maintain liquidity to cover unexpected shortfalls in general fund revenue to allow additional transfers (about one percent) authorized in the current and proposed general appropriations acts.

ADMINISTRATIVE IMPLICATIONS

HB311 transfers cash balances that are not budgeted or that have planned appropriations and thus will not have an impact on agency operations.

COMPANIONSHIP

Enactment of HB311 is required in order to implement appropriations contained in the HAFC Substitute for HB2 and maintain solvency in the general fund operating reserve.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The general fund operating reserve will have a negative balance and will not have enough money to cover any necessary transfers should revenues not materialize in FY16. There would be no funding in the operating reserve in FY17 to cover legislative, special, supplemental, or information technology nonrecurring expenses and the HAFC Substitute for HB2 would not have sufficient revenue to cover appropriations and would not be a balanced budget as required by the New Mexico Constitution.

SUGGESTED AMENDMENTS

RLD suggested adding cash balances from the social work board (\$100,000), psychology board (\$300,000), and the board of acupuncture and oriental medicine (\$100,000); and increasing the sweep of cash balances to \$319,400 from the counseling and therapy practice board and \$1,448,600 from the barbers and cosmetologists board; and removing the amounts from the carnival ride insurance fund, the hoisting operators safety act fund, state financial regulation fund, and the operating fund from the manufactured housing division fees.

NMFA suggested the following language to replace subsection C in Section 2:

“Ten million dollars (\$10,000,000) is transferred from the New Mexico finance authority to the appropriation account of the general fund in fiscal year 2017. Except as otherwise provided in the Tax Administration Act, the amount is from the authority's fiscal year 2016 portion of the governmental gross receipts tax distributed to the authority pursuant to Section 7-1-6.38 NMSA 1978 that is not otherwise pledged for payment of obligations of the authority.”

Attachment A

Table 1. Transfers and Fund Sweeps		
Agency Name	Fund Name / Description	FY16 Amount (in thousands)
Legislature	General - Legislative Cash Balances	\$1,000.0
Attorney General	Consumer Settlement Fund	\$1,000.0
Taxation and Revenue Department	Weight Distance Tax Permit Fund	\$1,000.0
Taxation and Revenue Department	Delinquent Property Tax Fund	\$6,000.0
Homeland Security & Emergency Management	Anticipated Reversion of General Fund Capital Appropriation for Lincoln and Otero County Flood Damage Improvements	\$3,255.0
Department of Finance and Administration	MOE Appropriation	\$10,000.0
TOTAL		\$22,255.0
		FY17 Amount (in thousands)
Department of Finance and Administration	Disencumber Prior Appropriations	\$9,500.0
Department of Finance and Administration	Local DWI Grant Fund	\$3,500.0
Department of Finance and Administration	911 Enhancement	\$4,000.0
General Services Department	State Unemployment Compensation Reserve	\$8,750.0
Regulation and Licensing Department	Various Funds (see Table 2)	\$6,308.7
Regulation and Licensing Department	Mortgage Regulatory Fund	\$500.0
Office of Superintendent of Insurance	Insurance Fraud Fund	\$450.0
Board of Licensure for Professional Engineers and Professional Surveyors	Prof. Engineer's and Surveyor's Fund	\$1,000.0
Workers Comp. Administration	Workers' Comp. Administration Fund	\$6,000.0
Department of Workforce Solutions	Penalty and Interest Fund	\$1,000.0
Environment Department	Rural Infrastructure Revolving Loan Fund	\$1,000.0
New Mexico Finance Authority	Residual Public Project Revolving Fund GGRT Revenue after satisfying all bond requirements in FY16.	\$10,000.0
TOTAL		\$52,008.7

Table 2. Regulation and Licensing Department Boards and Commissions Fund Sweeps, FY17	
Fund Name	Amount (in thousands)
Real Estate Recovery Fund	\$242.6
Construction Publication Fund	\$105.2
Barber & Cosmetology Board	\$1,448.6
Athletic Commission Board	\$153.4
Counselors & Therapy Board	\$319.4
Chiropractors Board	\$538.5
Nutrition & Dietetics Board	\$116.8
Nursing Home Admin. Board	\$102.4
Occupational Therapy Board	\$316.6
Optometry Board	\$300.7
Osteopath Examiner Board	\$526.4
Podiatry Board	\$109.2
Physical Therapy Board	\$635.1
Thanatopractice Board	\$204.9
Interior Design Board	\$39.4
Landscape Architect Board	\$175.2
Speech/Lang/Hearing Board	\$251.2
Respiratory Care Board	\$72.2
Athletic Trainers Board	\$85.7
Impaired Dentist	\$65.2
Acupuncture Board	\$100.0
Psychology Board	\$300.0
Social Worker's Board	\$100.0
TOTAL	\$6,308.7

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